

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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DAVID J. KULIK,  
Plaintiff,

02-CV-0821E(Sr)

-vs-

JO ANNE B. BARNHART,  
Commissioner of Social Security,  
Defendant.

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ORDER

The Honorable H. Kenneth Schroeder, Jr., a Magistrate Judge in this judicial district, having conducted all proceedings necessary to determine the merits of factual and legal issues presented in this matter pursuant to this Court's referral under 28 U.S.C. §636(b)(1)(B), and having on September 21, 2006 filed his Report and Recommendation concerning such, and no objection thereto having been made, and the substance and rationale of said Report and Recommendation having been considered by this Court, it is hereby

**ORDERED** that said Report and Recommendation is fully confirmed, that the Commissioner's motion for judgment on the pleadings is denied, that the plaintiff's motion for judgment on the pleadings is granted and that this action is remanded to the Commissioner of Social Security for further proceedings.

DATED: Buffalo, N.Y.  
October 10, 2006

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**/s/ John T. Elfvin**  
JOHN T. ELFVIN  
S.U.S.D.J.